

SEP 25 2002

Before the
Federal Communications Commission
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of the Applications of)
)
Shareholders of Hispanic Broadcasting Corp.) Docket No. MB 02-235
(Transferor))
)
and)
) File Nos.:
Univision Communications, Inc.) BTC/BTCH-20020723ABL-ACC
(Transferee)) BTCH-20020723ACD-ACT
) BTCFTB-20020723ACU
For Consent to the Transfer of Control of Tichenor) BTCH-20020723ACV
Licensee Corporation, HBC License Corporation) BTCH-20020723ACW
HBC Houston License Corporation, WLXX-AM) BTC-20020723ACX
License Corporation, TMS License California,) BTCH-20020723ACY-ACZ
Inc., WADO-AM License Corporation, KTNQ-AM) BTCFTB-20020723ADA-ADB
License Corporation, KLVE-FM License) BTC/BTCH-20020723ADC-ADD
Corporation, WQBA-AM License Corporation,) BTC/BTCH-20020723ADE-ADH
WQBA-FM License Corporation, KECS-FM) BTCH-20020723ADK-ADP
License Corporation, KMRT-AM License) BTC-20020723ADQ
Corporation, KESS-AM License Corporation,) BTCH-20020723ADR
KICI-FM License Corporation, KHCK-FM)
License Corporation, KCYT-FM License)
Corporation, KLSQ-AM License Corporation,)
and HBC Investments, Inc.)

To: The Commission

CONSOLIDATED REPLY TO OPPOSITIONS

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September 25, 2002

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SUMMARY

In its Petition to Deny, the National Hispanic Policy Institute (“NHPI”) submitted evidence to show that the proposed merger between Hispanic Broadcasting Corporation (“HBC”) and Univision Communications, Inc. (“Univision”) was an unreliable sham. NHPI showed that while Clear Channel Communications, Inc. (“Clear Channel”) ostensibly holds a non-voting, non-attributable interest in HBC, it is nonetheless actively involved in the day-to-day management and operations of HBC’s radio stations. Univision likewise is actively involved in the business affairs of Entravision Communications Corporation (“Entravision”). NHPI provided evidence that Univision’s active involvement with Entravision would continue should the proposed merger close and Univision’s voting shares in Entravision are converted into non-voting shares. Tellingly, neither HBC nor Univision addressed these issues in their oppositions.

HBC and Univision have chosen to withhold information from the Commission. The withholding of evidence raises the negative presumption that if the evidence was produced it would not support HBC/Univision’s claims that the proposed merger complies with the Commission’s rules. For example, Univision has refused to disclose the class or classes of stock it proposes to exchange for its current Class A and Class C stock holdings in Entravision. Class A stock has the right to vote while Class C stock, *inter alia*, carries with it the right to appoint directors to Entravision’s board. While Univision claims it will exchange its voting shares for non-voting shares, it fails to identify the class of shares or what rights that class will have. Univision fails to explain what, if anything it proposes to do with its Class C shares. This failure to provide relevant evidence allows the Commission to draw the conclusion that if this information

was provided it would show that even after the merger, Univision would still have an attributable interest in Entravision.

The available evidence also indicates that Univision's interest in Entravision may exceed the 33% debt/equity benchmark. In its opposition Univision claims that it has no debt interest in Entravision. Documents filed with the Security and Exchange Commission demonstrate that Entravision does have outstanding debt owed to Univision.

HBC, for its part, has attempted to conceal material evidence concerning Clear Channel's involvement in the business affairs and management of HBC. HBC attempts to pass off Clear Channel's pervasive involvement in its management and the presence of Clear Channel employees at HBC radio stations as a "simple mistake." When it comes to Clear Channel's involvement in the affairs of its front companies nothing is simple. Clear Channel provides the Commission and the public with a thin veneer of compliance. On their faces these front companies appear to be independent, but further investigation reveals the extent of Clear Channel's control. For example, while a front company's radio station web site may identify the company as the owner and operator, a closer investigation reveals that the web site is registered not to the company, but to Clear Channel.

Clear Channel claims it made a mistake when it prepared and filed Annual Employment Reports on behalf of HBC. Clear Channel did make a mistake. Clear Channel's mistake was in truthfully identifying and listing each station at which Clear Channel had employees, without first considering which stations it secretly owned or operated in a prohibited manner. The available evidence indicates that Clear Channel has, or at least had, employees at each of the HBC radio stations. Nothing in the record,

including the declarations of Murphy and Tichenor, contradicts this conclusion.

The concealment of material evidence requires that the merger application be set for evidentiary hearing. In addition, Clear Channel's repeated misrepresentations and concealment of radio station ownership interests also should be set for hearing to determine whether Clear Channel's authorizations should be revoked and its officers and directors barred from ever holding FCC licenses.

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License Corporation, KMRT-AM License)	BTC-20020723ADQ
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To: The Commission

CONSOLIDATED REPLY TO OPPOSITIONS

The National Hispanic Policy Institute, Inc. ("NHPI"), by counsel, hereby replies to the oppositions of Hispanic Broadcasting Corporation ("HBC") and Univision Communications, Inc. ("Univision").

On September 3, 2002, NHPI filed a Petition to Deny the above referenced applications for transfer of control. In the Petition to Deny, NHPI argued that the

proposed merger of HBC and Univision (“New Univision”) is a sham designed to circumvent the FCC attribution rules. As NHPI stated in its Petition to Deny:

Based on past conduct, the Commission cannot reasonably expect Clear Channel to maintain a control level in New Univision commensurate with its purported ownership interest. Further, the Commission cannot reasonably expect Univision to cease its active involvement in the business affairs of Entravision, its leading affiliate and business partner. With a track record that belies the paper promises offered in the application, it is apparent that New Univision’s organizational structure is an unreliable sham which should be the subject of an evidentiary hearing.¹

NHPI showed in the Petition to Deny that while Clear Channel Communications, Inc. (“Clear Channel”) ostensibly held a non-voting, non-attributable interest in HBC, it is nonetheless actively involved in the day-to-day management and operations of HBC’s radio stations. Univision likewise is actively involved in the business affairs of Entravision Communications Corporation (“Entravision”). NHPI provided evidence that Univision’s active involvement with Entravision would continue should the proposed merger close and Univision’s voting shares in Entravision are converted into non-voting shares.

Tellingly, neither HBC nor Univision address these critical issues in their oppositions. HBC spends almost half its opposition pleading arguing that NHPI does not have standing. Both HBC and Univision repeat, with the fervor of monks chanting a mantra, that the merger application, on its face, complies with the Commission’s rules. This was never the issue. The issue is whether New Univision is an unreliable sham.²

¹ Petition to Deny, p.3.

² The Commission has applied the term “sham” to an application in situation where an applicant’s organizational structure complies on paper with FCC rules, but has been found unreliable. See e.g., *Evansville Skywave, Inc.*, 7 FCC Rcd 1699, 1700 (1992) citing *Revision of Application for Construction*

On this point Univision and HBC are conspicuously silent.

I. STANDING

HBC argues that NHPI lacks standing. The gravamen of its argument focuses on the fact that NHPI allowed its corporate standing in Delaware to lapse. HBC fails to cite any cases to support its novel interpretation of the requirements for standing.³ Even if NHPI is treated as an unincorporated association it still has standing. More importantly, NHPI's president Efrain Gonzalez, Jr. resides in the service area of HBC owned station WADO(AM) and is a regular listener. Clearly, Mr. Gonzalez has standing as an individual or alternatively as Efrain Gonzalez, Jr. d/b/a NHPI.

NHPI is a tax-exempt corporation and does not have to pay taxes. It does have to file a franchise tax report with the state of Delaware. Its inadvertent failure to do so resulted in its loss of corporate standing in Delaware. NHPI has now filed its corporate franchise tax report and is a corporation in good standing with the state of Delaware.⁴ It has continually maintained its status as a tax-exempt publicly supported foundation with the Internal Revenue Service.

HBC claims that it had accessed several Internet search engines in search of information about NHPI and its officers and directors, but claims to have found no information. If it searched the Internet, it must have found information on Efrain

Permit, 4 FCC Rcd 3853, 3856 (1989).

³ Compare, *Shareholders of AMFM, Inc.* 15 FCC Rcd 16062, 16077, n.38 (2000) where the Commission over Clear Channel's objections (similar to those raised by HBC) found that NHPI had sufficiently demonstrated standing to file a formal petition to deny under 47 C.F.R. §309(d). The Commission cited *Chet-5 Broadcasting, L.P.* 14 FCC Rcd 13041 (1999) (the Commission will accord party-in-interest status to a petitioner who demonstrates either residence in the station's service area or that the petitioner listens to or views the station regularly, and that such listening or viewing is not the result of transient contacts with the station).

⁴ See Exhibit 1 hereto.

Gonzalez. As his declaration states, Efrain Gonzalez is a New York State Senator. His interest in and participation in Hispanic issues is a matter of public record. For example, even a cursory search of the Internet would show that Senator Gonzalez is a founding member and Chairman Emeritus of the National Hispanic Caucus of State Legislators, a membership body of over 250 state legislators. Yet, HBC conveniently chose to conceal this information from the Commission in an effort to prejudice Senator Gonzalez personally as well as his standing before the Commission.

HBC also makes a “thinness” argument, which essentially states that because NHPI has no web presence of its own, it has no standing. As discussed above, this is a ridiculous argument unsupported by FCC rule or policy. The “thinness” argument, however, takes on more weight when dealing with front companies. A front company controlled by another entity has no need for a web presence. Concord Media Group, Inc. (“Concord Media”), Youngstown Radio Licensee, LLC (“Youngstown Radio”), Secret Communications II, LLC (“Secret Communications”), and Chase Radio Properties, LLC (“Chase Radio”) together own dozens of radio stations. Yet none of these companies has a corporate web presence.⁵ Many of the stations these companies own do operate web sites. On their face, these sites appear to be owned and operated by the individual front companies. For example, KSDO(AM), San Diego, California is licensed to Chase Radio.

⁵ As has been set forth in pleadings before the FCC, Clear Channel secretly controls these companies. These Clear Channel front companies own radio stations in markets where Clear Channel, either because of the Commission’s multiple ownership rules, or restrictions set by the Department of Justice, cannot own additional radio stations. See Petition to Deny filed November 8, 2001 by David Ringer against the assignment of license of WFCB (formerly WKKJ) Chillicothe, Ohio from Secret Communications II, Inc. to Clear Channel. (“Ringer Petition”) See also, Petition to Deny filed on January 2, 2002 by M&M Broadcasters, Ltd. against the assignment of license of KBRQ, Waco Texas from Chase Radio to Clear Channel. (“M&M Petition”) The Petitions to Deny and the associated pleadings are incorporated herein by reference.

On its face, it appears that Chase Radio controls KSDO's web site.⁶ This is not the case. The domain name KSDO.com is registered to Clear Channel.⁷ The same is true of other radio stations ostensibly owned and operated by Clear Channel front companies. Concord Media's radio station WBGB's web site, wbgb.com, is registered to Clear Channel.⁸ Also registered to Clear Channel is Secret Communication's radio station's web site, WFCB.com.⁹

While a Hispanic advocacy group may not have much of a web presence, it is hard to imagine that *bona fide* companies with radio stations worth many millions of dollars would have no meaningful web presence. The thinness of these front companies' web presence is illustrated in their failure to preserve for themselves key aspects of their intellectual property, namely their domain names. Clear Channel, not the stations' licensees, owns these most important pieces of intellectual property.

What the above examples demonstrate, and what is most relevant in the context of this proceeding, is that when dealing with Clear Channel, the Commission cannot simply look at the HBC/Univision merger application and conclude that, on its face, it complies with the rules. As in the case of the front companies' web sites, which on their faces appear to be controlled and operated by the individual companies, a more detailed investigation reveals that this is just a thin veneer designed to conceal the true owner and operator, Clear Channel. With Clear Channel, the Commission cannot simply assume that what you see is what you get.

⁶ See, Exhibit 2.

⁷ See, Exhibit 3.

⁸ See, Exhibit 4.

⁹ See, Exhibit 5.

II. UNIVISION AND HBC HAVE CHOSEN TO WITHHOLD MATERIAL EVIDENCE. THIS RAISES THE PRESUMPTION THAT THE EVIDENCE, IF PRODUCED, WOULD NOT SUPPORT HBC/UNIVISION'S CLAIM THAT THE PROPOSED MERGER COMPLIES WITH THE COMMISSION'S RULES AND POLICIES.

A. Univision Fails to Explain What Class or Classes of Entravision Stock It will Hold If the Proposed HBC/Univision Merger is Granted.

In the Petition to Deny, NHPI questioned the type and nature of stock ownership Univision will maintain after the merger.¹⁰ As set forth in the Petition to Deny and in SEC filings, Univision currently holds two classes of stock in Entravision. In addition to the 14,942,931 Class A voting shares, Univision also owns 21,983,392 Class C shares. The Class A shares are voting and represent a 9.86% voting interest in Entravision. The Class C shares are non-voting, but carry with them the right to significantly influence the affairs of Entravision, including the right to appoint two directors to Entravision's board of directors. Together, Univision's Class A and C shares represent approximately a 32% equity interest in Entravision.

In its Opposition, Univision claims, "the only basis for Univision's attribution in Entravision is its 9.86% voting interest. Once that stock is exchanged for Entravision non-voting stock (which has no right of representation on the board), ... Univision will no longer have an attributable interest in Entravision."¹¹

Univision does not identify for which class of shares it proposes to exchange its Class A voting shares. Clearly, it should not be Class C shares because these carry with

¹⁰ Petition to Deny pp. 18-19. "Univision should be required to set forth the exact nature of its proposed post-merger interest in Entravision, including all rights it would have under each class of stock it would hold."

¹¹ Univision Opposition at p. 10.

them, *inter alia*, the right to appoint directors to the Entravision board. Nor does Univision state what rights the new class of shares will have. Univision has failed to provide the Commission with the information it needs to determine whether the proposed exchange of Class A voting shares for an unidentified class of non-voting shares with unspecified rights complies with the Commission's attribution rules. With all due respect to Univision, the question of whether its interest in Entravision will be attributable is one for the Commission to decide. Univision had an obligation to provide the Commission with this information and failed to do so.

More troubling is Univision's statement that "the only basis for Univision's attribution in Entravision is its 9.86% voting interest." The Class C shares carry significant rights, including the right to elect directors. Univision does not state whether it will modify the rights of its Entravision Class C shares.

Univision further argues that a substantial equity involvement by a network with an affiliate does not automatically equate to control of the station by the network.¹² Univision has much more than the typical network/affiliate relationship with Entravision. As Entravision's SEC 10K acknowledges, "**Univision has significant influence over our business.**"¹³ For example, Univision has the exclusive right to sell national advertising on behalf of Entravision. In 2001, national advertising accounted for 41% of Entravision's total television advertising revenue. Univision's sales efforts coupled with its continuing delivery of programming gives Univision control over both programming and sales at the Entravision television stations. After the merger, will Univision still have the exclusive right to sell national advertising on behalf of Entravision? In its

¹² Univision Opposition at p.11.

Opposition, Univision fails to answer this question. Univision simply expects the Commission to accept its assertion that its interest in Entravision will be non-attributable.

Univision has chosen to withhold material information from the Commission. Only one conclusion can be drawn from its failure to produce material evidence: Univision post-merger will still have an attributable interest in Entravision. *Tendler v. Jaffe*, 203 F.2d 14, 19 (D.C. Cir. 1953) (“The omission by a party to produce relevant and important evidence of which he has knowledge, and which is peculiarly within his control, raises the presumption that if produced the evidence would be unfavorable to his cause.”); *International Union, UAW v. National Labor Relations Board*, 459 F.2d 1329, 1336 (D.C. Cir. 1972) (“the failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the . . . document, if brought, would have exposed facts unfavorable to the party.”) (quoting J. Wigmore, *Evidence* §284, 3rd ed. 1940); *United States v. Robinson*, 233 F.2d 517, 519 (D.C. Cir. 1956) (“[u]nquestionably the failure of a defendant in a civil case to testify or offer other evidence within his ability to produce and which would explain or rebut a case made by the other side, may, in a proper case, be considered a circumstance against him and may raise presumption that the evidence would not be favorable to his position”); *Washoe Shoshone Broadcasting*, 3 FCC Rcd 3948, 3952-53 (Rev. Bd. 1988); *Thornell Barnes v. Illinois Bell Telephone Co.*, 1 FCC 2d 1247, 1274 (Rev. Bd. 1965).

Univision’s failure to produce evidence allows the Commission to conclude that even after it exchanges its Class A shares - for an unidentified class of shares with

¹³ Petition to Deny at p 17.

unspecified rights – its interest in Entravision will still be attributable. Further, the Commission should conclude that Univision would maintain its Class C shares which carry with them significant rights to control the affairs of Entravision, including the right to appoint directors to its board. Despite its proposal to exchange one class of shares for another class of shares, the Commission should conclude that Univision would continue to exert significant influence and control over the management and operations of Entravision.

B. The Available Evidence Indicates that Univision's Interest in Entravision Exceeds the Commission's Equity/Debt Rule.

Based on the available evidence, the Commission should conclude that Univision's equity interest in Entravision exceeds the Commission's 33% equity/debt benchmark.¹⁴ In its Petition to Deny, NHPI argued that Entravision's outstanding debt to Univision should be fully enumerated to ensure that the Commission's equity/debt rule is not violated.¹⁵ In its Opposition, Univision states, "Univision has no debt interest in Entravision."¹⁶ This is not a true statement. Univision's SEC Form 10K reveals that Entravision has accounts payable owed to Univision.¹⁷ Whether this debt is sufficient to put Univision over the debt/equity threshold cannot be determined. Further, it cannot be determined whether Entravision has other debt outstanding to Univision. Univision had a full and fair opportunity to disclose the total percentage of debt and equity it has in

¹⁴ See, 47 C.F.R. §73.3555 Note 2. See also, *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559 (1999), *reco.*, 16 FCC Rcd 1097 (2001).

¹⁵ Petition to Deny, pp.18-19.

¹⁶ Univision Opposition, p. 11.

¹⁷ The relevant portions of Univision's SEC Form 10K are attached hereto as Exhibit 6.

Entravision. Once again, it chose to conceal material information from the Commission. The negative inference to be drawn from this concealment is that if Univision fully and accurately disclosed the percentage of debt and equity it has, it would exceed the Commission's 33% threshold. Audited financial statements should accompany any further statements from Univision concerning its combined level of debt and equity interest in Entravision.

C. HBC Has Failed to Provide Evidence Concerning the Extent of Participation by Clear Channel Principals in the Management and Operations of HBC. HBC's Failure to Provide Relevant Evidence of Which It has Knowledge Raises the Negative Presumption that a Truthful Response Would Not be Favorable to HBC.

In its Petition to Deny, NHPI submitted a copy of an Amended Complaint filed by Spanish Broadcasting System, Inc. ("SBS").¹⁸ In its Petition to Deny, NHPI stated,

As SBS's suit demonstrates, Clear Channel has actively participated in the management and operational affairs of HBC. Clear Channel's conduct, therefore, is clearly active and its interest in HBC is attributable. Clear Channel's participation in the affairs of HBC demonstrates a pattern of conduct in which Clear Channel conceals, through numerous material misrepresentations to the FCC, the actual ownership and control of certain radio station groups, including HBC.¹⁹

NHPI submitted a copy of the Amended Complaint to demonstrate that Clear Channel actively participates in the management and operations of HBC. The evidence indicates that L. Lowry Mays, Clear Channel's Chairman and Chief Executive Officer, and Randall Mays, Clear Channel's Executive Vice President and Chief Financial Officer,

¹⁸ HBC challenged the Amended Complaint because *inter alia* it was not signed by counsel and might not therefore be a copy of the actual complaint filed by SBS in Florida District Court. A copy of the signed a Amended Complaint as actually filed with the Florida District Court is attached hereto as Exhibit 7. The two documents appear to be identical.

¹⁹ Petition to Deny, p.10, footnotes omitted.

participated in negotiations and other management level activities on behalf of HBC.

This type of active involvement in the management of HBC's business affairs is inconsistent with Clear Channel's claimed role as a passive, non-voting investor.

HBC raises several reasons why the Commission should not consider the SBS suit. Primary among these is that the suit has not been adjudicated. As HBC points out, the suit deals with antitrust issues and alleged torts against SBS. HBC is correct that these issues still have to be adjudicated. However, the factual statements involving Clear Channel's participation in the daily business affairs of HBC have not been challenged.²⁰ HBC in its Opposition does not deny the truth of these allegations.

HBC and Clear Channel have an affirmative duty to fully disclose Clear Channel's involvement in the business affairs and executive decisions of HBC. HBC is seeking FCC approval to merge with Univision. It has an obligation to present the Commission with all relevant information in its possession. Rather than build a record on which a decision can be based, HBC has chosen to withhold information. HBC's decision to withhold information raises the negative inference that if Clear Channel's participation in the management and operations of HBC were fully disclosed, the Commission would find that Clear Channel's interest in HBC is attributable.

D. HBC has Failed to Explain How It is that Clear Channel Can Claim to Have Its Employees Working at HBC Radio Stations and Not Have an Attributable Interest in HBC.

Exhibits 5 through 16 of NHPI's Petition to Deny are copies of FCC Form 396B, Broadcast Station Annual Employment Report, filed by Clear Channel either on behalf of

²⁰ Clear Channel's motion to dismiss in the Florida District Court assumes the truth of the factual allegations.

HBC or a Clear Channel subsidiary. These Employment Reports list radio stations where Clear Channel has one or more employees. Each of these reports lists one or more stations licensed to HBC. As NHPI stated in its Petition to Deny, “The employment reports provide irrefutable evidence that Clear Channel employees are present at a significant number of HBC’s stations.”²¹ **Neither the declaration of Neal A. Murphy nor the declaration of MacHenry T. Tichenor, Jr. denies that Clear Channel employees work at HBC stations.**²² HBC and Clear Channel provide several confused and contradictory explanations as to why Clear Channel filed reports under penalty of perjury with the FCC, which it now claims are inaccurate and false.

HBC tries to brush off these representations to the FCC as a “simple mistake – nothing more.”²³ Such a cavalier statement makes a mockery of the Commission, its rules and process. Apparently, Clear Channel believes that it can meet FCC reporting requirements by making representation, under penalty of perjury, which it has not taken the trouble to verify. In its Opposition, HBC claims, “the Clear Channel reports in question reflect only the employees who work for Clear Channel stations.”²⁴ This statement is either yet another mistake or a stunning admission against interest. As Murphy’s declaration states, Clear Channel included in the annual employment reports not only stations that Clear Channel owned, but also stations with which Clear Channel had local marketing agreements (“LMA”) and joint sales agreements (“JSA”). Thus, by its own admission, Clear Channel had employees working at non-Clear Channel stations.

²¹ Petition to Deny, p.14.

²² HBC Opposition, Attachments 3 and 6.

²³ HBC Opposition at p.7.

²⁴ *Id.*

The issue of what Clear Channel was doing filling out annual employment reports for stations it did not own has been also raised in the Chillicothe proceeding.²⁵ In that proceeding, Murphy also provided a declaration (“Murphy’s First Declaration”).²⁶ In Murphy’s First Declaration, he explained that Clear Channel listed all stations within which it had employees, including stations with which Clear Channel had a JSA. Listing stations with which it had JSA employees according to Clear Channel was a mistake. Murphy’s First Declaration makes no mention of listing stations owned by HBC or listing stations in which Clear Channel does not have employees.²⁷ Why did Murphy not disclose this key fact at that time? Surely by the time Murphy’s First Declaration was prepared he, as well as other Clear Channel employees and agents, had an opportunity to review and verify the information contained in the annual employment reports. Rather than be forthcoming with the Commission, Clear Channel chose to wait until it was caught and then claim that it made a “simple mistake.”

Another mistake, according to Clear Channel was listing WFCB, (formerly WKKJ), Chillicothe, as a station at which it had employees.²⁸ Despite material evidence that Clear Channel has been secretly and illegally operating WFCB for years, Clear Channel claims that listing WFCB on its annual employment report was a mistake.²⁹ It

²⁵ See note 5 hereto.

²⁶ Murphy’s first Declaration is attached hereto as Exhibit 8.

²⁷ As Murphy’s First Declaration states, “The stations listed included not only Clear Channel owned, but also stations with which Clear Channel had local marketing agreements (“LMA”) or joint sales agreements (“JSA”).”

²⁸ According to Clear Channel it did not commence programming WFCB until September 16, 2001, therefore listing WFCB in a report filed in November 2000 was merely a mistake.

²⁹ Without further explanation Murphy’s First Declaration states, “The internal database we used to prepare the Forms 395-B erroneously listed radio station WKKJ(FM), Chillicothe, Ohio, as a station with which Clear Channel had an LMA at the time.”

was no doubt also a mistake for Clear Channel to register for its use WFCB's Internet domain name. It must have been a mistake for Clear Channel to prepare an engineering exhibit and accompanying FCC Form 302 on behalf of Chase Radio and then file it with the FCC.³⁰ WFCB employees, including the station manager, were mistaken when they claimed that the station was owned by Clear Channel.³¹ Also it's a mistake for Clear Channel, pursuant to a JSA, to provide programming and other management services to stations not related to the sales function of a JSA.³² Each time Clear Channel is caught engaging in conduct in violation of the FCC's rules it simply claims that it has made a mistake. That Clear Channel has made so many mistakes all evidencing its control over radio stations it does not own, simply does not ring true. The evidence indicates that Clear Channel has knowingly violated the Commission's rules, has concealed its activities and, when caught, has dissembled claiming it just made a simple mistake.

Clear Channel did make a mistake when it filled out the 2000 annual employment reports; but not the mistake it claims to have made. Clear Channel's mistake was in truthfully identifying and listing each station at which Clear Channel had employees, without first considering which stations it secretly owned or operated in a prohibited manner. The available evidence indicates that Clear Channel has, or at least had, employees at each of the HBC radio stations. Nothing in the record, including the declarations of Murphy and Tichenor, contradicts this conclusion.³³

³⁰ See, M&M Petition.

³¹ See, Ringer Petition

³² *Id.*

³³ HBC's Attachment 5, which shows that it had more Hispanic employee than Clear Channel is meaningless. The employees Clear Channel has at HBC's stations do not necessarily have to be Hispanic. They could be, for example, management personnel engaged in station sales and operations.

III. CONCLUSION

Clear Channel has become expert at concealing information from the Commission and the public. A good example of this type of deception is the different front companies' web sites. On the surface, they appear to be owned by the individual companies, but this is a thin veneer. A closer look reveals that the domain names for these radio stations' web sites are registered to Clear Channel. So also with its several front companies, Clear Channel seeks to present the appearance that they are independently owned and operated enterprises. On the surface, HBC appears to be independent of Clear Channel; but scratch the surface, and Lowry and Randall Mays appear as HBC's chief negotiators and agents provocateurs. Likewise, records filed with the FCC, by mistake, show that Clear Channel has maintained an employee presence at most, if not all, of HBC's stations.

Univision also has not been forthcoming. It has refused to even identify the class or classes of Entravision stock it will hold after the merger. Further, it has not been candid in identifying the percentage of debt and equity it holds in Entravision.

The Commission needs to find some way to get to the truth. It cannot rely on Clear Channel to be forthcoming or candid. Likewise, if HBC is controlled by Clear Channel, as the evidence indicates that it is, the Commission cannot count on HBC to be forthcoming or candid.

It would be extremely dangerous to approve the proposed transaction, for it would serve as a future model for wrongdoing in order to circumvent the Commission's ownership rules. The Commission's rules and policies permit it to look beneath the

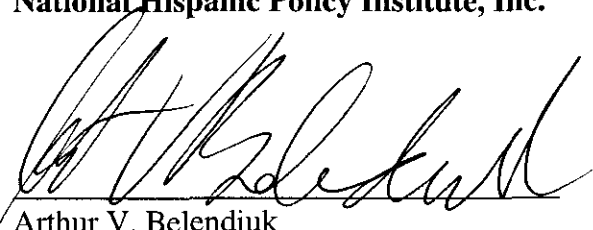
surface of a transaction that on its face appears to comply with the Commissions rules and investigate the true nature of the transaction. In transactions involving Clear Channel, information presented to the Commission concerning ownership and operation of a radio station group does not always coincide with how that company actually operates. The Commission should view this transaction for what it is: a merger between Clear Channel and HBC, on the one hand, and Univision and Entravision on the other.

The Commission needs to set for evidentiary hearing not only the applications involved in the proposed HBC/Univision merger, but also Clear Channel's authorizations. If, after hearing, it is determined that Clear Channel has undisclosed ownership interests in various radio station companies and has concealed this information from the Commission, through misrepresentation and deceit, its licenses and the licenses of its front companies should be revoked and its officers and directors should be forever barred from being FCC licensees.

Respectfully submitted,

National Hispanic Policy Institute, Inc.

By:



Arthur V. Belendiuk
Its Counsel

Smithwith & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W., # 301
Washington, D.C. 20016
(202) 363-4050
September 25, 2002

EXHIBIT 1

**STATE OF DELAWARE
CERTIFICATE FOR RENEWAL
AND REVIVAL OF CHARTER**

National Hispanic Policy Institute, Inc.

a corporation organized under the laws of Delaware, the charter of which was voided for non-payment of taxes, now desires to procure a restoration, renewal and revival of its charter, and hereby certifies as follows:

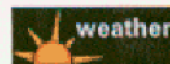
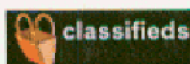
1. The name of this corporation is National Hispanic Policy Institute, Inc.
2. Its registered office in the State of Delaware is located at XL Corporate Services, Inc., 15 North Street, City of Dover, Delaware
Zip Code 19901 County of Kent the name and address of its registered agent is XL Corporate Services, Inc., 15 North Street, Dover, Delaware 19901
3. The date of filing of the original Certificate of Incorporation in Delaware was January 19, 1995
4. The date when restoration, renewal, and revival of the charter of this company is to commence is the 28TH day of FEB. same being prior to the date of the expiration of the charter. This renewal and revival of the charter of this corporation is to be perpetual.
5. This corporation was duly organized and carried on the business authorized by its charter until the 1 ST day of MARCH A.D. 1997 at which time its charter became inoperative and void for non-payment of taxes and this certificate for renewal and revival is filed by authority of the duly elected directors of the corporation in accordance with the laws of the State of Delaware.

IN TESTIMONY WHEREOF, and in compliance with the provisions of Section 312 of the General Corporation Law of the State of Delaware, as amended, providing for the renewal, extension and restoration of charters, Efrain Gonzalez, Jr.

the last and acting authorized officer hereunto set his/her hand to this certificate this
20 day of September A.D. 2002

By: Efrain Gonzalez, Jr.
Authorized Officer
Name: Efrain Gonzalez, Jr.
Print or Type
Title: President

EXHIBIT 2


[Win Vegas - Rent DVDs](#)

[Listen Live](#) [Program Lineup](#) [Station](#) [Contests](#) [Fun](#) [Contact](#)

Here's What's Happening



WHEN GLENN BECK TALKS, PEOPLE LISTEN...

.....AND HOWL, CHEER OR CRY FOUL!

Check out KSDO's newest morning show with [Glenn Beck](#) 6 to 9AM. You never know what topic will dominate the The Glenn Beck Show. He talks about the day's events with passion, humor and sarcasm. He's winning some listeners, angering others, and leaving some scratching their heads. Call Glenn at 1.888.727.BECK.

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[Free](#)
[Baby Coupons](#)
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THE RAY LUCIA SHOW Weekdays 9AM-Noon



Now more than ever, San Diegans are staying informed —and quite possibly wealthier as well, with the help of one of the most esteemed financial consultants in Southern California — [Ray Lucia](#) on AM 1130 KSDO. Ray is a nationally known business and financial expert with his own practice in San Diego that assists clients with Financial Planning, Asset Management, and Corporate Benefits.

For tickets, tours & entertainment news,



THE JIM CRAMER SHOW Weekdays 12-1PM



Flamboyant, irreverent, over-the-top, and smart as a whip, Jim Cramer personifies the tech-fueled, risk-taking, fortune-making spirit of today's marketplace. He is a co-founder and regular commentator for The Street.com - an Internet financial news hub with a fresh, hip point of view that caters to the needs of the new breed of online investors. Call the Jim Cramer Show at 1.800.862.8686.

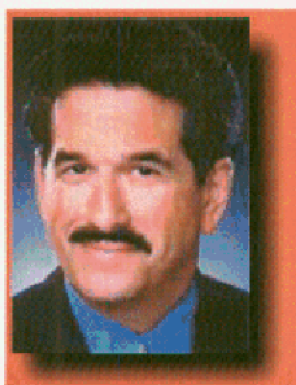
Click [HERE](#) for more!

The Suze Orman Show Weekdays 1PM-2PM

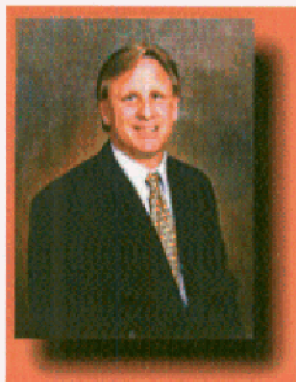


The Suze Orman Show is syndicated by Premiere Radio Networks. Covering today's hottest financial topics, "The Suze Orman Show" helps people make the connection between self worth and net worth.

Click [HERE](#) for more!



THE TROUBLESHOOTER *with Tom Martino* Weekdays 2PM-3PM



*REAL MONEY, REAL
ESTATE with Dan
Holbrook*
Weekdays 3-5PM

Every weekday afternoon from 3pm-5pm, KSDO listeners get their real estate questions answered on "Real Money, Real Estate with Dan Holbrook". Just call in and get your questions answered about buying a home, selling a home or any other real estate question you may have. "Real Money, Real Estate", Weekdays 3pm-5pm on AM 1130 KSDO. Click [HERE](#) for more.

Investors Voice of Reason
Weekdays 5PM-6PM



Investors Voice of Reason with Jerry Klein and and Steve Peasley features two of the most esteemed financial consultants in Southern California. Well known for his quick wit and thinking ability, Jerry brings an extensive knowledge of the markets to the show. Steve believes that educating listeners about how the markets work is as important as the latest market news.

Click [HERE](#) for more!

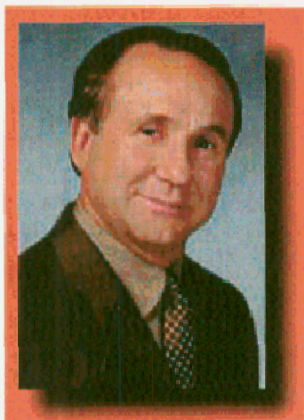


THE SAVAGE NATION
Weeknights 6-9PM

An independent-minded individualist, [Michael Savage](#) fits no stereotype. He attacks big government and liberal media bias, but champions the environment and animal rights. Savage says, "Those who listen to me say they hear a bit of Plato, Henry Miller, Jack Kerouac, Moses, Jesus, and Frankenstein. Be a part of the Savage Nation by calling 1-800-449-8255."

THE MICHAEL REAGAN SHOW

Weekdays 9PM-
MIDNIGHT



Michael Reagan launched his very successful talk show at KSDO in San Diego several years ago. The "very independent" Michael Reagan is intelligent, informative, and intense! A living embodiment of conservative politics, Reagan draws upon his experiences and background to provide insight and a healthy dose of wisdom and wit. Call Michael at 1-800-468-MIKE.

Click [HERE](#) for more!

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*Excludes taxes
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EXHIBIT 3

[HOME](#)[DOMAIN NAMES](#)[WEB SITES](#)[SECURITY](#)[OTHER SERVICES](#)[ACCOUNT MANAGER](#)[RENEW SERVICES](#)[VIEW ORDER](#)[WHOIS](#)

WHOIS Search Results

Whois Server Version 1.3

Domain names in the .com, .net, and .org domains can now be registered with many different competing registrars. Go to <http://www.internic.net> for detailed information.

Domain Name: KSDO.COM
Registrar: ALLDOMAINS.COM INC.
Whois Server: whois.alldomains.com
Referral URL: <http://www.alldomains.com>
Name Server: NS2.CLEARCHANNEL.COM
Name Server: NS1.CLEARCHANNEL.COM
Updated Date: 27-nov-2001

>>> Last update of whois database: Sat, 21 Sep 2002 04:58:53 EDT <<<

The Registry database contains ONLY .COM, .NET, .ORG, .EDU domains and Registrars.

The registrar we were trying to contact could not be reached for your query. The request timed out.

Search Our WHOIS Records

e.g. netsol.com

Search WHOIS by:

☒ Domain name

☐ NIC handle

[Learn More](#) about using WHOIS

Get the Name You Want

Is the name you want already registered? Check to see if it's for sale on our [GreatDomains.com](#) listing of names for resale. [Click here to view the catalog.](#)

Get Listed in Top Search Engines

Make sure all your key Web pages can be

More Ways to use our Site

Brainstorm a name [using keywords.](#)

Get Noticed with [Personalized E-Mail](#). Use e-mail that matches your domain name.

[Transfer your Domain Name](#)



ksdo.com
Request: ksd.com

Registrant:

Clear Channel Communications (DOM-103223)
10835 Gulfdale Street San Antonio TX 78216 US

Domain Name: ksd.com

Registrar Name: Alldomains.com
Registrar Whois: whois.alldomains.com
Registrar Homepage: <http://www.alldomains.com>

Administrative Contact:

DNS Administrative Role Account (NIC-445037) Clear Channel
Communications

10835 Gulfdale Street San Antonio TX 78216 US
dns@clearchannel.com +1.2102583700 Fax- +1.2102583701

Technical Contact, Zone Contact:

DNS Administrative Role Account (NIC-445039) Clear Channel
Communications

10835 Gulfdale Street San Antonio TX 78216 US
dns@clearchannel.com +1.2102583700 Fax- +1.2102583701

Created on.....: 1998-May-06.
Expires on.....: 2004-May-05.
Record last updated on...: 2002-Jun-19 10:11:55.

Domain servers in listed order:

NS1.CLEARCHANNEL.COM	216.142.92.10
NS2.CLEARCHANNEL.COM	216.142.92.11

Register your domain name at <http://www.alldomains.com>

EXHIBIT 4

[HOME](#)[DOMAIN NAMES](#)[WEB SITES](#)[SECURITY](#)[OTHER SERVICES](#)[ACCOUNT MANAGER](#)[RENEW SERVICES](#)[VIEW ORDER](#)[WHOIS](#)

WHOIS Search Results

Registrant:

Clear Channel Radio of Jacksonville (WBGB-DOM)
8386 Baymeadows Road # 107
Jacksonville
FL, 32256
US

Domain Name: WBGB.COM

Administrative Contact:

Bauernfeind, Tina (TB7387)
Clear Channel Communications
8386 Baymeadows Rd 256
Jacksonville, FL 32256
904-636-0507 (FAX) 904-636-7971

tinab@CCJAX.COM

Technical Contact:

Clemons, Richard (RC6549)
Clear Channel Communications
8386 Baymeadows Rd. #107
St. Augustine, FL 32256
(904) 636-0507 (3022)

rclemons@CCJAX.COM

Record expires on 27-Jul-2003.

Record created on 27-Jul-1998.

Database last updated on 21-Sep-2002 13:57:50 EDT.

Domain servers in listed order:

DNS2.MEDIANEXT.COM	209.70.1.101
DNS1.MEDIANEXT.COM	209.70.1.100

FAQ

What is a Handle record?

What is a Host host record?

The domain name has expired according to the WHOIS record. Can't I register?

LET US
YOUR WAY

Transfer
Domain
IT'S EASY

Register
Domain
1 YEAR
included in a 3 year

Search Our WHOIS Records

e.g. netsol.com

GO!

Search WHOIS by:

☒ Domain name

☐ NIC handle

[Learn More](#) about using WHOIS

[Get the Name You Want](#)

[More Ways to use our Site](#)

EXHIBIT 5

[HOME](#)[DOMAIN NAMES](#)[WEB SITES](#)[SECURITY](#)[OTHER SERVICES](#)[ACCOUNT MANAGER](#)[RENEW SERVICES](#) [VIEW ORDER](#) [WHOIS](#)

WHOIS Search Results

Whois Server Version 1.3

Domain names in the .com, .net, and .org domains can now be registered with many different competing registrars. Go to <http://www.internic.net> for detailed information.

Domain Name: WFCB.COM
Registrar: ALLDOMAINS.COM INC.
Whois Server: whois.alldomains.com
Referral URL: <http://www.alldomains.com>
Name Server: NS2.CLEARCHANNEL.COM
Name Server: NS1.CLEARCHANNEL.COM
Updated Date: 05-nov-2001

>>> Last update of whois database: Sat, 21 Sep 2002 04:58:53 EDT <<<

The Registry database contains ONLY .COM, .NET, .ORG, .EDU domains and Registrars.

The registrar we were trying to contact could not be reached for your query. The request timed out.

Search Our WHOIS Records

e.g. netsol.com

Search WHOIS by:

☒ Domain name☐ NIC handle

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Is the name you want already registered? Check to see if it's for sale on our [GreatDomains.com](#) listing of names for resale. [Click here to view the catalog.](#)

Get Listed in Top Search Engines

Make sure all your key Web pages can be

More Ways to use our Site

Brainstorm a name [using keywords.](#)

Get Noticed with [Personalized E-Mail](#). Use e-mail that matches your domain name.

[Transfer your Domain Name](#)

